



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 11, 1998

Mr. Richard Brown
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-1894

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117431.

The City of Dallas (the "city") received a request for the personnel file and photograph of former Dallas police officer, Joe Murphy. You have submitted two photographs of Officer Murphy and three documents you characterize as medical records. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.119 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information at issue.

Section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that do not appear relevant here. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). Consequently, unless the officer has given his written consent or is no longer living, you must withhold the photographs of the officer. Open Records Decision No. 536 (1989) (provision which protects police officer's photograph ceases to apply after death of officer).

¹You raise no exception to disclosure for the remaining portions of the personnel file nor have submitted these documents for our review. Therefore, we presume that this information has been released.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. You assert that the submitted documents are protected by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. One of the submitted documents, which we have marked, is a medical record and may only be released as provided by the MPA. The remaining documents are not medical records and may not be withheld under section 5.08 of V.T.C.S. article 4495b.

We note, however, that certain information contained in these documents is confidential by law. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. We have marked the information that must be withheld under section 552.117(2).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 117431

Enclosures: Marked documents

cc: Mr. Clarence Otworth
P.O. Box 7035
Clearwater, Florida 33758
(w/o enclosures)